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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 27.11.2006.

Haryana State Electricity Board .... Appellant.

vs

Vinod Khanna .....Respondent.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.S.K.Jain,Advocate,for the appellant.
Mr.Harkesh Manuja,Advocate, for the respondent.

Kiran Anand Lall, J.

Both the courts below decreed the suit of the respondent for permanent injunction restraining the appellant from disconnecting the electricity supply, through his meter bearing no.SM3-9, on account of non-payment of Rs.3,38,521.15 paise, being sundry charges/ average charges/ penalty/ surcharge, for using load, in excess than the sanctioned one.

The case of the respondent (plaintiff), as given in the judgment of the first appellate court, is that he is consumer of the appellant, and the sanctioned load of his electricity connection is 11 KW. He had never used load, in excess than the sanctioned one, and had also never defaulted in making payment of the electricity bills. On 28.2.1989, officials of the appellant visited his premises in his absence but found no irregularity in the electricity supply. They, however, demanded illegal gratification from the person present there, and on his refusal to satisfy their demand, they left, after hurling out a threat that the respondent would be involved in a criminal case and heavy penalty would also be imposed on him. They again visited his premises on 1.3.1989, at about 8.00 p.m., on the pretext of checking the meter. The meter room was, however, found locked and key was also not

available with the watchman. They, therefore, broke open the meter room. There was a cut in electric power, at that time. They, therefore, tampered with the installation in the meter room, on the pretext of checking the meter equipment, and as a result, the meter got burnt as soon as the power supply was restored, at about 10.00 p.m. The respondent came to know about all this on 3.3.1989, on his return from out station. He had to run, from pillar to post, for restoration of power supply to his premises. He was also served with memo no.4492 dated 3.3.1989, stating therein that he had been found using load, in excess than the sanctioned one. He was also asked to submit a fresh test report, otherwise electricity supply to his premises would be ordered to be disconnected and heavy penalty would be imposed on him. According to the case of the respondent, when inspection was carried out on 28.2.1989, all the electricity installations were found in order. About the second inspection done on 3.3.1989, it was pleaded that it was a malafide one. The appellant was adamant to disconnect his power supply due to non-payment of the disputed amount in pursuance of the memo dated 3.3.1989 served upon him. Therefore, the respondent had to file the suit.

According to the appellant, the respondent had been found using load in excess of the sanctioned one. The M&T seal was also found fake/ duplicate. On 2.3.1989, the seal of his meter was also found fake/ duplicate. It was further stated that the meter was checked, in the presence of one Satbir Singh, Supervisor of the respondent, and at that time, there was no power cut. It was denied that the meter got burnt due to any mischief played by the officials of the appellant. Preliminary objections regarding maintainability of the suit and the jurisdiction of civil court to try it, were also taken up.

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Trial was conducted in respect of the following issues:-

1. Whether the plaintiff has been making regular payment of actual consumption charges? OPP
2. Whether the memo No.4492, dated 8.3.1989 is null and void? OPP
3. Whether the present suit is not maintainable under Section 82 of Electricity Supply Act, 1948? OPD
4. Whether the suit is not maintainable in view of Section 5 of the Haryana Government Undertaking (Dues) Recovery Act, 1970? OPD
5. Whether the civil court has got no jurisdiction to entertain the present suit? OPD
6. Relief.

Findings in respect of all the issues were recorded in favour of the respondent and against the appellant, by the trial court and also the first appellate court, and the suit was decreed. The appellant, therefore, came up in second appeal, to this court.

Notice of appeal was issued to the respondent, who put in appearance through his counsel and pointed out that the appeal was liable to be dismissed, as there are concurrent findings of fact recorded in his favour by two courts. On being inquired by the court, learned counsel for the appellant, too, could not point out any question of law, much less a substantial one, arising in this appeal for determination. Undisputedly, the respondent was not present at the time his meter was checked, and later on, also, no show cause notice was given to him nor any opportunity of hearing was given, before imposing penalty vide impugned memo dated 3.3.1989.

The amount of penalty imposed on the respondent was quite

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substantial viz. rupees 3,38,521.15 paise, and, as rightly observed by the learned first appellate court, the principles of natural justice would have demanded that he should have been given a show cause notice and also heard before ordering recovery of such a huge amount from him. It is further in the judgment that there was nothing on record to show that Satbir Singh, who was present at the time of checking, was an authorised agent of the respondent.

In view of the above, it would suffice to say that since no substantial question of law is involved, the appeal is liable to be dismissed, and it is so ordered.

27.11.2006. (Kiran Anand Lall)
vs. Judge.